

524.904 Loans and extensions of credit to one borrower.

1. For purposes of [this section](#), “loans and extensions of credit” means a state bank’s direct or indirect advance of funds to a borrower based on an obligation of that borrower to repay the funds or repayable from specific property pledged by the borrower and shall include:

- a. A contractual commitment to advance funds, as defined in [section 524.103](#).
- b. A maker or endorser’s obligation arising from a state bank’s discount of commercial paper.
- c. A state bank’s purchase of securities subject to an agreement that the seller will repurchase the securities at the end of a stated period.
- d. A state bank’s purchase of third-party paper subject to an agreement that the seller will repurchase the paper upon default or at the end of a stated period. The amount of the state bank’s loan is the total unpaid balance of the paper owned by the state bank less any applicable dealer reserves retained by the state bank and held by the state bank as collateral security. Where the seller’s obligation to repurchase is limited, the state bank’s loan is measured by the total amount of the paper the seller may ultimately be obligated to repurchase. A state bank’s purchase of third-party paper without direct or indirect recourse to the seller is not a loan or extension of credit to the seller.
- e. An overdraft.
- f. Amounts paid against uncollected funds.
- g. Loans or extensions of credit that have been charged off the books of the state bank in whole or in part, unless the loan or extension of credit has become unenforceable by reason of discharge in bankruptcy; or is no longer legally enforceable because of expiration of the statute of limitations or a judicial decision; or forgiven under an executed written agreement by the state bank and the borrower.
- h. The aggregate rentals payable by the borrower under leases of personal property by the state bank as lessor.
- i. Loans and extensions of credit to one borrower consisting of investments in which the state bank has invested pursuant to [section 524.901](#).
- j. Amounts invested by a state bank for its own account in the shares and obligations of a corporation which is a customer of the state bank.

k. All other loans and extensions of credit to one borrower of the state bank not otherwise excluded by [subsection 7](#), whether directly or indirectly, primarily or secondarily.

2. A state bank may grant loans and extensions of credit to one borrower in an amount not to exceed fifteen percent of the state bank’s aggregate capital as defined in [section 524.103](#), unless the additional lending provisions described in [subsection 3 or 4](#) apply.

3. A state bank may grant loans and extensions of credit to one borrower in an amount not to exceed twenty-five percent of the state bank’s aggregate capital if any amount that exceeds the lending limitation described in [subsection 2](#) is fully secured by one or any combination of the following:

a. Nonnegotiable bills of lading, warehouse receipts, or other documents transferring or securing title covering readily marketable nonperishable staples when such goods are covered by insurance to the extent that insuring the goods is customary, and when the market value of the goods is not at any time less than one hundred twenty percent of the amount of the loans and extensions of credit.

b. Nonnegotiable bills of lading, warehouse receipts, or other documents transferring or securing title covering readily marketable refrigerated or frozen staples when such goods are fully covered by insurance and when the market value of the goods is not at any time less than one hundred twenty percent of the amount of the loans and extensions of credit.

c. Shipping documents or instruments that secure title to or give a first lien on livestock. At inception, the current value of the livestock securing the loans must equal at least one hundred percent of the amount of the outstanding loans and extensions of credit. For purposes of [this section](#), “livestock” includes dairy and beef cattle, hogs, sheep, and poultry, whether or not held for resale. For livestock held for resale, current value means the price listed for livestock in a regularly published listing or actual purchase price established by invoice. For livestock not held for resale, the value shall be determined by the local slaughter

price. The state bank must maintain in its files evidence of purchase or an inspection and valuation for the livestock pledged that is reasonably current, taking into account the nature and frequency of turnover of the livestock to which the documents relate.

d. Mortgages, deeds of trust, or similar instruments granting a first lien on farmland or on single-family or two-family residences, subject to the provisions of [section 524.905](#), provided the amount loaned shall not exceed fifty percent of the appraised value of such real property.

e. With the prior approval of the superintendent, other readily marketable collateral. The market value of the collateral securing the loans must at all times equal at least one hundred percent of the outstanding loans and extensions of credit.

4. A state bank may grant loans and extensions of credit to one borrower not to exceed thirty-five percent of the state bank's aggregate capital if any amount that exceeds the lending limitations described in [subsection 2 or 3](#) consists of obligations as endorser of negotiable chattel paper negotiated by endorsement with recourse, or as unconditional guarantor of nonnegotiable chattel paper, or as transferor of chattel paper endorsed without recourse subject to a repurchase agreement.

5. a. A state bank may grant loans and extensions of credit to a borrowing group in an amount not to exceed twenty-five percent of the state bank's aggregate capital if all loans and extensions of credit to any one borrower within a borrowing group conform to [subsection 2 or 3](#), and the financial strength, assets, guarantee, or endorsement of any one borrowing group member is not relied upon as a basis for loans and extensions of credit to any other borrowing group member. A state bank may grant loans and extensions of credit to a borrowing group in an amount not to exceed thirty-five percent of aggregate capital if all loans and extensions of credit to any one borrower within a borrowing group conform to [subsection 2, 3, or 4](#), and the financial strength, assets, guarantee, or endorsement of any one borrowing group member is not relied upon as a basis for loans and extensions of credit to any other borrowing group member. While not to be construed as an endorsement of the quality of any loan or extension of credit, the superintendent may authorize a state bank to grant loans and extensions of credit to a borrowing group in an amount not to exceed fifty percent of aggregate capital if all loans and extensions of credit to any one borrower within a borrowing group conform to [subsection 2 or 3](#), and the financial strength, assets, guarantee, or endorsement of any one borrowing group member is not relied upon as a basis for loans and extensions of credit to any other borrowing group member.

b. For the purposes of [this subsection](#), a borrowing group includes a person and any legal entity, including but not limited to corporations, limited liability companies, partnerships, trusts, and associations where the following exist:

(1) One or more persons own or control fifty percent or more of the voting securities or membership interests of the borrowing entity or a member of the group.

(2) One or more persons control, in any manner, the election of a majority of the directors, managers, trustees, or other persons exercising similar functions of the borrowing entity or a member of the group.

(3) One or more persons have the power to vote fifty percent or more of any class of voting securities or membership interests of the borrowing entity or a member of the group.

c. To demonstrate compliance with [this subsection](#), a state bank shall maintain in its files, at a minimum, all of the following:

(1) Documentation demonstrating the current ownership of the borrowing entity.

(2) Documentation identifying the persons who have voting rights in the borrowing entity.

(3) Documentation identifying the board of directors and senior management of the borrowing entity.

(4) The state bank's assessment of the borrowing entity's means of servicing the loan or extension of credit, including specific reasons in support of that assessment. The assessment shall include an analysis of the borrowing entity's financial history, its present and projected economic and financial performance, and the significance of any financial support provided to the borrowing entity by members of the borrowing group and third parties.

6. For purposes of [this section](#):

a. Loans and extensions of credit to one person will be attributed to another person and will be considered one borrower if either of the following apply:

(1) The proceeds, or assets purchased with the proceeds, benefit another person, other than a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services.

(2) The expected source of repayment for each loan or extension of credit is the same for each borrower and no borrower has another source of income from which the loan may be fully repaid.

b. Loans and extensions of credit to a partnership, joint venture, or association are deemed to be loans and extensions of credit to each member of the partnership, joint venture, or association. This provision does not apply to limited partners in limited partnerships or to members of joint ventures or associations if the partners or members, by the terms of the partnership or membership agreement or other written agreement, are not to be held generally liable for the debts or actions of the partnership, joint venture, or association, and those provisions are valid under applicable law.

c. Loans and extensions of credit to members of a partnership, joint venture, or association are not attributed to the partnership, joint venture, or association unless loans and extensions of credit are made to the member to purchase an interest in the partnership, joint venture, or association, or the proceeds are used for a common purpose with the proceeds of loans and extensions of credit to the partnership, joint venture, or association.

d. Loans and extensions of credit to one borrower which are endorsed or guaranteed by another borrower will not be combined with loans and extensions of credit to the endorser or guarantor unless the endorsement or guaranty is relied upon as a basis for the loans and extensions of credit. A state bank shall not be deemed to have violated [this section](#) if the endorsement or guaranty is relied upon after inception of loans and extensions of credit, but the state bank shall, if required by the superintendent, dispose of loans and extensions of credit to one borrower in the amount in excess of the limitations of [this section](#) within a reasonable time as fixed by the superintendent.

e. When the superintendent determines the interests of a group of more than one borrower, or any combination of the members of the group, are so interrelated that they should be considered a unit for the purpose of applying the limitations of [this section](#), some or all loans and extensions of credit to that group of borrowers existing at any time shall be combined and deemed loans and extensions of credit to one borrower. A state bank shall not be deemed to have violated [this section](#) solely by reason of the fact that loans and extensions of credit to a group of borrowers exceed the limitations of [this section](#) at the time of a determination by the superintendent that the indebtedness of that group must be combined, but the state bank shall, if required by the superintendent, dispose of loans and extensions of credit to the group in the amount in excess of the limitations of [this section](#) within a reasonable time as fixed by the superintendent.

7. Total loans and extensions of credit to one borrower for the purpose of applying the limitations of [this section](#) shall not include any of the following:

a. Additional funds advanced for taxes or for insurance if the advance is for the protection of the state bank.

b. Accrued and discounted interest on existing loans or extensions of credit.

c. Any portion of a loan or extension of credit sold as a participation by a state bank on a nonrecourse basis, provided that the participation results in a pro rata sharing of credit risk proportionate to the respective interests of the originating and participating lenders. Where a participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be deemed to exist only if the agreement also provides that in the event of a default or comparable event defined in the agreement, participants must share in all subsequent repayments and collections in proportion to their percentage participation at the time of the occurrence of the event. If an originating state bank funds the entire loan, it must receive funding from the participants on the same day or the portions funded will be treated as loans by the originating state bank to the borrower.

d. Loans and extensions of credit to one borrower to the extent secured by a segregated deposit account which the state bank may lawfully set off. An amount held in a segregated deposit account in the name of more than one customer shall be counted only once with respect to all borrowers. Where the deposit is eligible for withdrawal before the secured loan

matures, the state bank must establish internal procedures to prevent release of the security without the state bank's prior consent.

e. Loans and extensions of credit to one borrower which is a bank.

f. Loans and extensions of credit to one borrower which are fully secured by bonds and securities of the kind in which a state bank is authorized to invest for its own account without limitation under [section 524.901, subsection 3](#).

g. Loans and extensions of credit to a federal reserve bank or to the United States, or of any department, bureau, board, commission, agency, or establishment of the United States, or to any corporation owned directly or indirectly by the United States, or loans and extensions of credit to one borrower to the extent that such loans and extensions of credit are fully secured or guaranteed or covered by unconditional commitments or agreements to purchase by a federal reserve bank or by the United States, or any department, bureau, board, commission, agency, or establishment of the United States, or any corporation owned directly or indirectly by the United States. Loans and extensions of credit to one borrower secured by a lease on property under the terms of which the United States, or any department, bureau, board, commission, agency, or establishment of the United States, or any political subdivision of the state, is lessee and under the terms of which the aggregate rentals payable to the borrower will be sufficient to satisfy the amount loaned are considered to be loans and extensions of credit secured or guaranteed as provided for in this paragraph.

h. Loans and extensions of credit to one borrower as the drawer of drafts drawn in good faith against actually existing values in connection with a sale of goods which have been endorsed by the borrower with recourse or which have been accepted.

i. Loans and extensions of credit arising out of the discount of commercial paper actually owned by a borrower negotiating the same and endorsed by a borrower without recourse and which is not subject to repurchase by a borrower.

j. Loans and extensions of credit drawn by a borrower in good faith against actually existing values and secured by nonnegotiable bills of lading for goods in process of shipment.

k. Loans and extensions of credit in the form of acceptances of other banks of the kind described in [section 524.903, subsection 3](#).

l. Loans and extensions of credit of the borrower by reason of acceptances by the state bank for the account of the borrower pursuant to [section 524.903, subsection 1](#).

m. A renewal or restructuring of a loan as a new loan or extension of credit following the exercise by a state bank of reasonable efforts, consistent with safe and sound banking practices, to bring the loan into conformance with the lending limit, unless new funds are advanced by the state bank to the borrower or unless a new borrower replaces the original borrower or unless the superintendent determines that the renewal or restructuring was undertaken as a means to evade the state bank's lending limit.

[C97, §1870; SS15, §1870; C24, 27, 31, 35, 39, §9223; C46, 50, 54, 58, 62, 66, §528.14, 528.15; C71, 73, 75, 77, 79, 81, §524.904; 81 Acts, ch 173, §4]

89 Acts, ch 257, §16; 95 Acts, ch 148, §90; 96 Acts, ch 1056, §10; 99 Acts, ch 6, §2; 2004 Acts, ch 1141, §25; 2011 Acts, ch 102, §3, 4, 10; 2012 Acts, ch 1021, §102 – 104; 2013 Acts, ch 5, §2; 2013 Acts, ch 30, §129, 130

Referred to in §524.103, 524.613, 524.710, 524.901, 524.907, 524.1602